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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

UMG RECORDINGS, INC., CAPITOL
RECORDS, LLC, CONCORD BICYCLE
ASSETS, LLC, CMGI RECORDED MUSIC
ASSETS LLC, SONY MUSIC
ENTERTAINMENT, and ARISTA MUSIC,

Plaintiffs,

v.

INTERNET ARCHIVE, BREWSTER
KAHLE, KAHLE/AUSTIN FOUNDATION,
GEORGE BLOOD, and GEORGE BLOOD
L.P.,

Defendants.

Case No. 3:23-cv-06522-MMC

**DEFENDANTS INTERNET ARCHIVE,
KAHLE, BLOOD, AND GEORGE BLOOD
L.P.'S ANSWER TO PLAINTIFFS'
AMENDED COMPLAINT**

JURY TRIAL DEMANDED

Defendants Internet Archive, Brewster Kahle, George Blood, and George Blood L.P. (“Internet Archive Defendants”), by and through its undersigned counsel, hereby respectfully demand a trial by jury on all issues so triable and submit this Answer and these Defenses in response to the Amended Complaint filed by UMG Recordings, Inc., Capitol Records, LLC, Concord Bicycle Assets, LLC, CMGI Recorded Music Assets LLC, Sony Music Entertainment, and Arista Music (collectively, “Plaintiffs”). To the extent not specifically admitted herein, the allegations of the Amended Complaint are denied. The Internet Archive Defendants specifically deny that they have caused Plaintiffs to suffer any harm, losses, or damages. The Internet Archive Defendants deny any allegations that may be implied by the headings of the Amended Complaint. The Internet Archive Defendants decline to adopt or acknowledge as accurate any defined terms in Plaintiffs’ Amended Complaint to the extent they constitute allegations directed at the Defendants. The Internet Archive Defendants reserve the right to challenge the authenticity or admissibility of all sources and documents referred to or purportedly quoted by Plaintiffs in the Amended Complaint.

NATURE OF THE ACTION

1. Paragraph 1 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants admit that the Amended Complaint purports to be an action arising under the copyright laws of the United States. The Internet Archive Defendants deny the remaining allegations of paragraph 1 of the Amended Complaint.

2. Paragraph 2 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 2 of the Amended Complaint.

3. Paragraph 3 contains legal conclusions to which no answer is required. With respect to allegations that purport to quote from, describe, or paraphrase other sources, the Internet Archive Defendants refer to those sources for the accuracy and completeness of the quotations. The Internet Archive Defendants deny the remaining allegations of paragraph 3 of the Amended Complaint.

1 4. Paragraph 4 contains legal conclusions to which no answer is required. To the
2 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 4
3 of the Amended Complaint.

4 5. The Internet Archive Defendants are without knowledge or information sufficient
5 to admit or deny the allegations of paragraph 5, and on that basis, deny them.

6 6. Paragraph 6 contains legal conclusions to which no answer is required. To the
7 extent an answer is required, the Internet Archive Defendants admit that Congress enacted the
8 Music Modernization Act in 2018.

9 7. The Internet Archive Defendants deny the characterization of the “Great 78
10 Project” as incomplete and/or ambiguous. The Internet Archive Defendants admit that the 78 rpm
11 records are phonographic records designed to be played at a speed of approximately 78 revolutions
12 per minute, and that the 78 rpm record was the industry-standard record format from the early
13 1900s until the 1950s. The Internet Archive Defendants are without knowledge or information
14 sufficient to admit or deny the remaining allegations of paragraph 7, and on that basis, deny them.

15 8. Paragraph 8 contains legal conclusions to which no answer is required. To the
16 extent an answer is required, the Internet Archive Defendants admit that the Internet Archive
17 created and operates the web page for the Great 78 Project, available at <https://great78.archive.org/>.
18 The Internet Archive Defendants admit that, as of May 29, 2024, the Internet Archive website
19 states that the Great 78 Project is a “project for the preservation, research, and discovery of 78rpm
20 [sic] records.” The Internet Archive Defendants deny the remaining allegations of paragraph 8 of
21 the Amended Complaint.

22 9. Paragraph 9 contains legal conclusions to which no answer is required. To the
23 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 9
24 of the Amended Complaint.

25 10. Paragraph 10 contains legal conclusions to which no answer is required. To the
26 extent an answer is required, the Internet Archive Defendants admit that Brewster Kahle is the
27 founder and Chair of the Board of the Internet Archive. The Internet Archive Defendants deny
28 the remaining allegations of paragraph 10 of the Amended Complaint.

1 11. Paragraph 11 contains legal conclusions to which no answer is required. To the
2 extent an answer is required, the Internet Archive Defendants admit that Brewster Kahle is the
3 president and principal funder of the Kahle/Austin Foundation. The Internet Archive Defendants
4 deny the remaining allegations of paragraph 11 of the Amended Complaint.

5 12. The Internet Archive Defendants admit that George Blood is a professional audio
6 engineer with experience in preserving and digitizing physical vinyl records. The Internet Archive
7 Defendants admit that George Blood offers those services through his company, George Blood,
8 L.P. (“GBLP”). The Internet Archive Defendants admit that Internet Archive engaged GBLP.
9 The Internet Archive Defendants deny the remaining allegations of paragraph 12 of the Amended
10 Complaint.

11 13. Paragraph 13 contains legal conclusions to which no answer is required. To the
12 extent an answer is required, the Internet Archive Defendants admit that Internet Archive and
13 Brewster Kahle were plaintiffs in *Kahle v. Gonzalez*, 487 F.3d 697 (9th Cir. 2007). The Internet
14 Archive Defendants admit that Internet Archive filed the following amicus curiae briefs in support
15 of petitioners in *Eldred v. Ashcroft*, 537 U.S. 186 (2003) (No. 01-618): *Brief of Amicus Curiae the*
16 *Internet Archive in Support of Petitioners*; *Brief of Amici Curiae the Internet Archive, Prelinger*
17 *Archives, and Project Gutenberg Literary Archive Foundation in Support of Petitioners*. With
18 respect to allegations that purport to quote from, describe, or paraphrase legal proceedings or
19 amicus curiae briefs, the Internet Archive Defendants refer to those sources for the accuracy and
20 completeness of the quotations. The Internet Archive Defendants deny the remaining allegations
21 of paragraph 13 of the Amended Complaint.

22 14. Paragraph 14 contains legal conclusions to which no answer is required. To the
23 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 14
24 of the Amended Complaint.

25 15. Paragraph 15 contains legal conclusions to which no answer is required. To the
26 extent an answer is required, the Internet Archive Defendants admit that Internet Archive was a
27 plaintiff in *Hachette Book Group, et al. v. Internet Archive, et al.*, 20-cv-4160 (JGK), 2023 WL
28 2623787 (S.D.N.Y. Mar. 24, 2023). With respect to allegations that purport to quote from,

1 describe, or paraphrase legal proceedings, the Internet Archive Defendants refer to those sources
 2 for the accuracy and completeness of the information therein. The Internet Archive Defendants
 3 deny the remaining allegations of paragraph 15 of the Amended Complaint.

4 16. Paragraph 16 contains legal conclusions to which no answer is required. With
 5 respect to allegations that purport to quote from, describe, or paraphrase other sources, the Internet
 6 Archive Defendants refer to those sources for the accuracy and completeness of the quotations.
 7 The Internet Archive Defendants deny the remaining allegations of paragraph 16 of the Amended
 8 Complaint.

9 17. Paragraph 17 contains legal conclusions to which no answer is required. To the
 10 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 17
 11 of the Amended Complaint.

12 18. The Internet Archive Defendants are without knowledge or information sufficient
 13 to admit or deny the allegations of paragraph 18, and on that basis, deny them.

14 19. Paragraph 19 contains legal conclusions to which no answer is required. To the
 15 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 19
 16 of the Amended Complaint.

17 20. Paragraph 20 contains legal conclusions to which no answer is required. To the
 18 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 20
 19 of the Amended Complaint.

20 **PLAINTIFFS AND THEIR LEGALLY PROTECTED MUSIC**

21 21. The Internet Archive Defendants are without knowledge or information sufficient
 22 to admit or deny the allegations of paragraph 21, and on that basis, deny them.

23 22. The Internet Archive Defendants are without knowledge or information sufficient
 24 to admit or deny the allegations of paragraph 22, and on that basis, deny them.

25 23. The Internet Archive Defendants are without knowledge or information sufficient
 26 to admit or deny the allegations of paragraph 23, and on that basis, deny them.

27 24. The Internet Archive Defendants are without knowledge or information sufficient
 28 to admit or deny the allegations of paragraph 24, and on that basis, deny them.

26. The Internet Archive Defendants are without knowledge or information sufficient to admit or deny the allegations of paragraph 26, and on that basis, deny them.

27. The Internet Archive Defendants are without knowledge or information sufficient to admit or deny the allegations of paragraph 27, and on that basis, deny them.

28. Paragraph 28 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants are without knowledge or information sufficient to admit or deny the allegations of paragraph 28, and on that basis, deny them.

29. The Internet Archive Defendants admit that Internet Archive is a not-for-profit corporation organized under the laws of California with its headquarters at 300 Funston Avenue, San Francisco, CA 94118. The Internet Archive Defendants admit that Internet Archive is registered with the New York Department of State to transact business and accept service of process within the State of New York.

30. The Internet Archive Defendants, with the exception of Brewster Kahle, are without knowledge or information sufficient to admit or deny the allegations of paragraph 30, and on that basis, deny them. Brewster Kahle admits that the Kahle/Austin Foundation is a Washington non-profit corporation organized under the laws of Washington which has been associated with addresses at 319 Main Street, Biddeford, ME 04005-2354 and 513 Simonds Loop, San Francisco, CA 94129-1787.

31. The Internet Archive Defendants admit that Brewster Kahle resides in San Francisco, CA, that Mr. Kahle is the founder and Chair of the Board of the Internet Archive, and that Mr. Kahle is the president of the Kahle/Austin Foundation.

32. The Internet Archive Defendants admit that George Blood, L.P. is a limited partnership organized under the laws of Pennsylvania with its headquarters at 21 W. Highland Avenue, Philadelphia, PA 19118, and its principal place of business at 502 W. Office Center Drive,

1 Fort Washington, PA 19034. The Internet Archive Defendants admit that GBLP provides archival
2 audio and moving image services, including digitizing audio, video, and film media, and migrating
3 data from legacy formats.

4 33. The Internet Archive Defendants admit that George Blood resides in or around
5 Philadelphia, PA. The Internet Archive Defendants admit that Mr. Blood is the president and
6 owner of GBLP.

7 **JURISDICTION AND VENUE**

8 34. Paragraph 34 contains legal conclusions to which no answer is required. To the
9 extent an answer is required, the Internet Archive Defendants admit that the Amended Complaint
10 purports to be an action arising under the Copyright Act, 17 U.S.C. §§ 101, *et seq.*, and the Music
11 Modernization Act, 17 U.S.C. § 1401. The Internet Archive Defendants deny that there is any
12 legal or factual basis for such an action.

13 35. Paragraph 35 contains legal conclusions to which no answer is required. To the
14 extent an answer is required, the Internet Archive Defendants admit that the Amended Complaint
15 purports to be an action arising under the Copyright Act, 17 U.S.C. §§ 101, *et seq.*, and the Music
16 Modernization Act, 17 U.S.C. § 1401 and that on that basis, this Court has subject matter
17 jurisdiction under 28 U.S.C. §§ 1331 and 1338. The Internet Archive Defendants deny that there
18 is any legal or factual basis for such an action.

19 36. Paragraph 36 contains legal conclusions to which no answer is required. To the
20 extent an answer is required, the Internet Archive Defendants deny that this Court has personal
21 jurisdiction over Internet Archive pursuant to § 302 of New York's Civil Practice Law & Rules.
22 The Internet Archive Defendants admit that Internet Archive is registered with the New York
23 Department of State to transact business and accept service of process within the State of New
24 York. The Internet Archive Defendants deny the remaining allegations of paragraph 36 of the
25 Amended Complaint.

26 37. Paragraph 37 contains legal conclusions to which no answer is required. To the
27 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 37
28 of the Amended Complaint.

38. The Internet Archive Defendants admit that the Internet Archive receives monetary donations and donations of records from donors nationwide and internationally. With respect to allegations that purport to quote from, describe, or paraphrase public filings, the Internet Archive Defendants refer to those sources for the accuracy and completeness of the information therein. The Internet Archive Defendants deny the remaining allegations of paragraph 38 of the Amended Complaint.

39. Paragraph 39 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants admit that Brewster Kahle is the founder and Chair of the Board of the Internet Archive and shares in the decision-making, execution of, and control, of Internet Archive's business. The Internet Archive Defendants, with the exception of Brewster Kahle, are without knowledge or information sufficient to admit or deny the remaining allegations of paragraph 39, and on that basis, deny them. Brewster Kahle admits that he founded Wide Area Information Server (WAIS), which was sold to America OnLine, and Alexa Internet, which was sold to Amazon.com in 1999. Brewster Kahle denies the remaining allegations of paragraph 39 of the Amended Complaint.

40. Paragraph 40 contains legal conclusions to which no answer is required. With respect to allegations that purport to quote from, describe, or paraphrase public filings, the Internet Archive Defendants refer to those sources for the accuracy and completeness of the information therein. To the extent an answer is required, the Internet Archive Defendants, with the exception of Brewster Kahle, are without knowledge or information sufficient to admit or deny the allegations of paragraph 40, and on that basis, deny them. Brewster Kahle admits that the Kahle/Austin Foundation has received donations from the Kahle/Austin Revocable Trust. Brewster Kahle denies the remaining allegations of paragraph 40 of the Amended Complaint.

41. Paragraph 41 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants admit that, as of May, 29, 2024, GBLP's website states: "George Blood LP is a nationally recognized provider of archival audio and moving image preservation" and "[W]e meet the needs of our various clients in libraries, museums, archives, corporations, and private collections across the country." *Careers*, George

Blood LP, <https://www.georgeblood.com/careers>. The Internet Archive Defendants admit that GBLP is located in Pennsylvania and that Internet Archive is located in California. The Internet Archive Defendants admit that Internet Archive has paid GBLP for its services. With respect to allegations that purport to quote from, describe, or paraphrase public tax filings, the Internet Archive Defendants refer to those sources for the accuracy and completeness of the information therein. The Internet Archive Defendants deny the remaining allegations of paragraph 41 of the Amended Complaint.

42. Paragraph 42 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants admit that, as of May, 29, 2024, GBLP's website states: "For more than 35 years George Blood has been delivering professional audio services to musicians, composers, universities, libraries, corporations, and individual clients, both nationally and internationally." *Experience*, George Blood LP, <https://www.georgeblood.com/experience>. The Internet Archive Defendants deny the remaining allegations of paragraph 42 of the Amended Complaint.

43. For purposes of this action only, the Internet Archive Defendants admit that venue is proper in this District. Paragraph 43 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the remaining allegations of paragraph 43 of the Amended Complaint.

FACTUAL BACKGROUND

A. In 2018, Congress extended federal protection to pre-1972 sound recordings

44. Paragraph 44 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 44 of the Amended Complaint.

45. Paragraph 45 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 45 of the Amended Complaint. The Internet Archive Defendants are without knowledge or information sufficient to admit or deny the remaining allegations of paragraph 45, and on that basis, deny them.

1 46. Paragraph 46 contains legal conclusions to which no answer is required. To the
2 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 46
3 of the Amended Complaint

4 **B. Internet Archive built a mass infringement platform that flouts the Music**
5 **Modernization Act.**

6 47. The Internet Archive Defendants admit that Brewster Kahle founded Internet
7 Archive in 1996, and that Internet Archive provides a number of services not at issue in this action.
8 With respect to allegations that purport to quote from, describe, or paraphrase other sources, the
9 Internet Archive Defendants refer to those sources for the accuracy and completeness of the
10 quotations.

11 48. The Internet Archive Defendants admit that the Great 78 Project includes creating
12 digital copies of sound recordings fixed in physical 78 rpm records. The Internet Archive
13 Defendants deny the remaining allegations of paragraph 48 of the Amended Complaint.

14 49. The Internet Archive Defendants admit that Internet Archive uploads digital copies
15 of recordings as items onto the Great 78 Project website. The Internet Archive Defendants admit
16 that each item available on the website has a separate webpage that shows metadata information,
17 including the item's contributor and uploader. The Internet Archive Defendants admit that each
18 item available on the website has an audio player, and that there is no limit to the number of times
19 a user can play an item for free. The Internet Archive Defendants admit that each item available
20 on the website has links to download the item, and that there is no limit to the number of times a
21 user can download an item for free. The Internet Archive Defendants deny the remaining
22 allegations of paragraph 49.

23 50. The Internet Archive Defendants admit that the screenshot shown in paragraph 50
24 of the Amended Complaint purports to be a screenshot of a Great 78 Project webpage for the sound
25 recording, "White Christmas," recorded by Bing Crosby, with a publication date in 1942 by Decca
26 Records. The Internet Archive Defendants are without knowledge or information sufficient to
27 admit or deny the remaining allegations of paragraph 50, and on that basis, deny them.

28

1 51. With respect to allegations that purport to quote from, describe, or paraphrase other
2 sources, the Internet Archive Defendants refer to those sources for the accuracy and completeness
3 of the quotations. The Internet Archive Defendants deny the remaining allegations of paragraph
4 51 of the Amended Complaint.

5 52. The Internet Archive Defendants admit that the Internet Archive controlled a
6 Twitter/X account (@great78project). The Internet Archive Defendants deny the remaining
7 allegations of paragraph 52 of the Amended Complaint.

8 53. The Internet Archive Defendants admit that the Internet Archive controlled an
9 account on the Mastodon platform. The Internet Archive Defendants deny the remaining
10 allegations of paragraph 53 of the Amended Complaint.

11 54. The Internet Archive Defendants admit that Brewster Kahle and George Blood have
12 spoken at conferences, appeared on podcasts and radio shows, and given interviews to journalists
13 regarding the Great 78 Project. The Internet Archive Defendants deny the remaining allegations
14 of paragraph 54 of the Amended Complaint.

15 55. The Internet Archive Defendants admit that the Internet Archive solicits record
16 donations. The Internet Archive Defendants admit that the Great 78 Project's website contains a
17 statement regarding donation of 78 rpm records and links to a page with donation instructions.
18 The Internet Archive Defendants deny the remaining allegations of paragraph 55 of the Amended
19 Complaint.

20 56. The Internet Archive Defendants admit that the Internet Archive solicits monetary
21 donations on its website. With respect to allegations that purport to quote from, describe, or
22 paraphrase the website, the Internet Archive Defendants refer to those sources for the accuracy
23 and completeness of the quotations.

24 57. The Internet Archive Defendants admit that paragraph 57 of the Amended
25 Complaint contains a screenshot purportedly showing a banner from a web page for the Great 78
26 Project. The Internet Archive Defendants deny the remaining allegations of paragraph 57 of the
27 Amended Complaint.

28

1 58. Paragraph 58 contains legal conclusions to which no answer is required. To the
2 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 58
3 of the Amended Complaint.

4 59. The Internet Archive Defendants admit that the Internet Archive has not filed any
5 notices of non-commercial use with the Copyright Office. Paragraph 59 contains legal conclusions
6 to which no answer is required. To the extent an answer is required, the Internet Archive
7 Defendants deny the remaining allegations of paragraph 59 of the Amended Complaint.

8 60. The Internet Archive Defendants admit that a blog post dated October 15, 2018,
9 titled “The Music Modernization Act is now law which means some pre-1972 music goes public”
10 by Jeff Kaplan was posted on the Internet Archive blog and that that a tweet dated October 15,
11 2018, on the Twitter account (@brewster_kahle) included a link to the blog post. With respect to
12 allegations that purport to quote from, describe, or paraphrase other sources, the Internet Archive
13 Defendants refer to those sources for the accuracy and completeness of the quotations. Paragraph
14 60 contains legal conclusions to which no answer is required. To the extent an answer is required,
15 the Internet Archive Defendants deny the remaining allegations of paragraph 60 of the Amended
16 Complaint.

17 61. The Internet Archive Defendants admit that Brewster Kahle delivered a
18 presentation at the Association for Recorded Sound Collection’s 2019 annual conference titled,
19 “Music Modernization Act 2018. How it did not go wrong, and even went pretty right.” With
20 respect to allegations that purport to quote from, describe, or paraphrase other sources, the Internet
21 Archive Defendants refer to those sources for the accuracy and completeness of the quotations.
22 The Internet Archive Defendants deny the remaining allegations of paragraph 61.

23 62. Paragraph 62 contains legal conclusions to which no answer is required. To the
24 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 62
25 of the Amended Complaint.

26 **C. Defendants’ infringement is of staggering scale.**

27 63. The Internet Archive Defendants admit that the Great 78 Project contains more than
28 400,000 items, some of which were digitized by GBLP. The Internet Archive Defendants admit

1 that a post dated October 16, 2017 on georgeblood.com, stated that “[t]his community effort seeks
 2 to digitize all 3 million minted sides (~3 minute recordings) published on 78 rpm discs from about
 3 1898 to the 1950s.” With respect to allegations that purport to quote from, describe, or paraphrase
 4 other sources, the Internet Archive Defendants refer to those sources for the accuracy and
 5 completeness of the quotations. Paragraph 63 contains legal conclusions to which no answer is
 6 required. To the extent an answer is required, the Internet Archive Defendants deny the remaining
 7 allegations of paragraph 63 of the Amended Complaint.

8 64. The Internet Archive Defendants admit that a recording was available on the Great
 9 78 Project website at [https://archive.org/details/78_white-christmas_irving-berlin-bingcrosby-](https://archive.org/details/78_white-christmas_irving-berlin-bingcrosby-ken-darby-singers-john-scott-trotter-and_gbia0000275a)
 10 [ken-darby-singers-john-scott-trotter-and_gbia0000275a](https://archive.org/details/78_white-christmas_irving-berlin-bingcrosby-ken-darby-singers-john-scott-trotter-and_gbia0000275a). The Internet Archive Defendants are
 11 without knowledge or information sufficient to admit or deny the remaining allegations of
 12 paragraph 64, and on that basis, deny them.

13 65. The Internet Archive Defendants admit that a recording, was available on the Great
 14 78 Project website at [https://archive.org/details/78_young-at-heart_frank-sinatra-nelson-riddle-](https://archive.org/details/78_young-at-heart_frank-sinatra-nelson-riddle-johnny-richards-carolyn-leigh_gbia0012315a)
 15 [johnny-richards-carolyn-leigh_gbia0012315a](https://archive.org/details/78_young-at-heart_frank-sinatra-nelson-riddle-johnny-richards-carolyn-leigh_gbia0012315a). The Internet Archive Defendants are without
 16 knowledge or information sufficient to admit or deny the remaining allegations of paragraph 65,
 17 and on that basis, deny them.

18 66. The Internet Archive Defendants admit that a recording was available on the Great
 19 78 Project website at [https://archive.org/details/78_saturday-night-is-the-loneliest-night-in-the-](https://archive.org/details/78_saturday-night-is-the-loneliest-night-in-the-week_frank-sinatra-axel-stordahl-cah_gbia0017538a)
 20 [week_frank-sinatra-axel-stordahl-cah_gbia0017538a](https://archive.org/details/78_saturday-night-is-the-loneliest-night-in-the-week_frank-sinatra-axel-stordahl-cah_gbia0017538a). The Internet Archive Defendants are
 21 without knowledge or information sufficient to admit or deny the remaining allegations of
 22 paragraph 66, and on that basis, deny them.

23 67. The Internet Archive Defendants admit that a recording was available on the Great
 24 78 Project website at [https://archive.org/details/78_potato-head-blues_louis-armstrong-and-his-](https://archive.org/details/78_potato-head-blues_louis-armstrong-and-his-hot-seven-armstrong_gbia0261792a)
 25 [hot-seven-armstrong_gbia0261792a](https://archive.org/details/78_potato-head-blues_louis-armstrong-and-his-hot-seven-armstrong_gbia0261792a). The Internet Archive Defendants are without knowledge or
 26 information sufficient to admit or deny the remaining allegations of paragraph 67, and on that
 27 basis, deny them.

28

68. The Internet Archive Defendants admit that a recording was available on the Great 78 Project website at https://archive.org/details/78_monks-dream_thelonious-monk-trio-thelonius-monk-art-blakey-gary-mapp-monk_gbia0254273b. The Internet Archive Defendants are without knowledge or information sufficient to admit or deny the remaining allegations of paragraph 68, and on that basis, deny them.

69. The Internet Archive Defendants deny the allegations of paragraph 69 of the Amended Complaint.

D. Brewster Kahle oversees and directs Internet Archive's infringement

70. The Internet Archive Defendants admit that Brewster Kahle is Internet Archive's founder and Chair of the Board. The Internet Archive Defendants admit that Mr. Kahle works 40 hours per week for Internet Archive. Paragraph 70 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the remaining allegations of paragraph 70 of the Amended Complaint.

71. The Internet Archive Defendants admit that Brewster Kahle was involved in the Great 78 Project's operations. With respect to allegations that purport to quote from, describe, or paraphrase other sources, the Internet Archive Defendants refer to those sources for the accuracy and completeness of the information therein.

72. The Internet Archive Defendants admit that Brewster Kahle is involved in the Great 78 Project's operations. The Internet Archive Defendants admit that a blog post was posted by Brewster Kahle on brewster.kahle.org dated October 2, 2022 titled "Pythonistas: Up for quick hack to test Dedup'ing 78rpm records using document clustering." The Internet Archive Defendants admit that a blog post dated December 6, 2020, was posted by Brewster Kahle on the Internet Archive blog titled "Discogs Thank You! A commercial community site with bulk data access." The Internet Archive Defendants admit that that a blog post dated July 14, 2019 was posted by Brewster Kahle on the Internet Archive blog titled "Correct Metadata is Hard: a Lesson from the Great 78 Project." With respect to allegations that purport to quote from, describe, or paraphrase other sources, the Internet Archive Defendants refer to those sources for the accuracy and completeness of the quotations.

73. The Internet Archive Defendants admit that Brewster Kahle advocates for the Great 78 Project. With respect to allegations that purport to quote from, describe, or paraphrase other sources, the Internet Archive Defendants refer to those sources for the accuracy and completeness of the quotations.

74. With respect to allegations that purport to quote from, describe, or paraphrase other sources, the Internet Archive Defendants refer to those sources for the accuracy and completeness of the quotations. The Internet Archive Defendants deny the remaining allegations of paragraph 74 of the Amended Complaint.

E. The Kahle/Austin Foundation sponsors Internet Archive's infringement.

75. The Internet Archive Defendants, with the exception of Brewster Kahle, are without knowledge or information sufficient to admit or deny the allegations of paragraph 75, and on that basis, deny them. Brewster Kahle admits that he and his wife established the Kahle/Austin Foundation. With respect to allegations that purport to quote from, describe, or paraphrase public tax filings, Brewster Kahle refers to those sources for the accuracy and completeness of the information therein. Brewster Kahle denies the remaining allegations of Paragraph 75.

76. Paragraph 76 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 76 of the Amended Complaint.

F. Defendants knew their conduct was infringing.

77. Paragraph 77 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 77. With respect to allegations that purport to quote from, describe, or paraphrase other sources, the Internet Archive Defendants refer to those sources for the accuracy and completeness of the quotations.

78. The Internet Archive Defendants deny the allegations of paragraph 78 of the Amended Complaint.

79. The Internet Archive Defendants admit that the Internet Archive and Brewster Kahle received a letter dated June 10, 2020, from Senator Thom Tillis. With respect to allegations

1 that purport to quote from, describe, or paraphrase the letter, the Internet Archive Defendants refer
 2 to the letter for the accuracy and completeness of the quotations. Paragraph 79 contains legal
 3 conclusions to which no answer is required. To the extent an answer is required, the Internet
 4 Archive Defendants deny the remaining allegations of paragraph 79 of the Amended Complaint.

5 80. The Internet Archive Defendants admit that the Internet Archive and Brewster
 6 Kahle received a letter dated July 22, 2020, from the Recording Industry Association of America
 7 (“RIAA”). With respect to allegations that purport to quote from, describe, or paraphrase the letter,
 8 the Internet Archive Defendants refer to the letter for the accuracy and completeness of the
 9 quotations.

10 81. Paragraph 81 contains legal conclusions to which no answer is required. To the
 11 extent an answer is required, the Internet Archive Defendants admit that Brewster Kahle responded
 12 to the RIAA by email. With respect to allegations that purport to quote from, describe, or
 13 paraphrase other sources, the Internet Archive Defendants refer to those sources for the accuracy
 14 and completeness of the quotations. The Internet Archive Defendants deny the remaining
 15 allegations of paragraph 81 of the Amended Complaint.

16 82. The Internet Archive Defendants admit that the Internet Archive received a letter
 17 from RIAA on July 22, 2020, and that the Internet Archive did not remove recordings in response
 18 to the letter prior to Plaintiffs’ identifying specific recordings they wanted removed. The Internet
 19 Archive Defendants deny the remaining allegations of paragraph 82 of the Amended Complaint.

20 83. The Internet Archive Defendants admit that a tweet dated April 25, 2021, from the
 21 Internet Archive (@internetarchive) Twitter account stated that “After scanning 250,000 sides,
 22 we’ve found 80% of these #78s were produced by the ‘Big Five’ labels.” The Internet Archive
 23 Defendants are without knowledge or information sufficient to admit or deny the remaining
 24 allegations of paragraph 83, and on that basis, deny them.

25 84. Admitted.

26 85. The Internet Archive Defendants admit that, as of May 29, 2024, the Unlocked
 27 Collection page states that “[a] reasonable search has been conducted to determine that these items
 28 are not commercially available.” The Internet Archive Defendants admit that the Internet Archive

1 has not filed a notice of non-commercial use with the Copyright Office regarding the Unlocked
2 Collection recordings. The Internet Archive Defendants deny the remaining allegations of
3 paragraph 85 of the Amended Complaint.

4 86. Paragraph 86 contains legal conclusions to which no answer is required. To the
5 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 86
6 of the Amended Complaint.

7 87. The Internet Archive Defendants admit that users have posted messages on its
8 forum. With respect to allegations that purport to quote from, describe, or paraphrase other
9 sources, the Internet Archive Defendants refer to those sources for the accuracy and completeness
10 of the quotations. The Internet Archive Defendants deny the remaining allegations of paragraph
11 87 of the Amended Complaint.

12 88. Admitted.

13 89. Paragraph 89 contains legal conclusions to which no answer is required. To the
14 extent an answer is required, the Internet Archive Defendants admit that they have not filed notices
15 of noncommercial use for the Sound Recordings identified in Exhibit A to the Amended
16 Complaint. The Internet Archive Defendants deny the remaining allegations of paragraph 89 of
17 the Amended Complaint.

18 90. The Internet Archive Defendants admit that GBLP worked with Internet Archive
19 in relation to the Great 78 Project. The Internet Archive Defendants admit that, as of May 29,
20 2024, GBLP's "Projects" webpage links to the Great 78 Project website. The Internet Archive
21 Defendants admit that, as of May 29, 2024, a web page of the Great 78 Project links to
22 www.georgeblood.com. With respect to allegations that purport to quote from, describe, or
23 paraphrase tax filings, the Internet Archive Defendants refer to those sources for the accuracy and
24 completeness of the information therein. The Internet Archive Defendants deny the remaining
25 allegations of paragraph 90 of the Amended Complaint.

26 91. The Internet Archive Defendants admit that George Blood recorded a video for
27 Internet Archive regarding the Great 78 Project. With respect to allegations that purport to quote
28

1 from, describe, or paraphrase other sources, the Internet Archive Defendants refer to those sources
2 for the accuracy and completeness of the quotations.

3 92. The Internet Archive Defendants admit that Internet Archive and George Blood
4 communicated over Twitter and elsewhere about the Great 78 Project. With respect to allegations
5 that purport to quote from, describe, or paraphrase other sources, the Internet Archive Defendants
6 refer to those sources for the accuracy and completeness of the quotations.

7 **G. Defendants' infringement has significantly harmed Plaintiffs.**

8 93. Paragraph 93 contains legal conclusions to which no answer is required. To the
9 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 93
10 of the Amended Complaint.

11 **CLAIMS FOR RELIEF**

12 **FIRST CAUSE OF ACTION**

13 **Infringing Reproduction against Internet Archive, Blood, and GBLP**

14 94. The Internet Archive Defendants incorporate each of its responses to paragraphs 1-
15 93 as though fully set forth herein.

16 95. The Internet Archive Defendants are without knowledge or information sufficient
17 to admit or deny the allegations of paragraph 95, and on that basis, deny them.

18 96. Paragraph 96 contains legal conclusions to which no answer is required. To the
19 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 96
20 of the Amended Complaint.

21 97. Paragraph 97 contains legal conclusions to which no answer is required. To the
22 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 97
23 of the Amended Complaint.

24 98. Paragraph 98 contains legal conclusions to which no answer is required. To the
25 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 98
26 of the Amended Complaint.

99. Paragraph 99 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 99 of the Amended Complaint.

100. Paragraph 100 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 100 of the Amended Complaint, and specifically deny that Plaintiffs have suffered or are entitled to any damages.

101. Paragraph 101 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 101 of the Amended Complaint, and specifically deny that Plaintiffs are entitled to attorneys' fees or costs.

102. Paragraph 102 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 102 of the Amended Complaint, and specifically deny that Plaintiffs are entitled to injunctive relief.

SECOND CAUSE OF ACTION

Infringing Reproduction and Distribution against Internet Archive

103. The Internet Archive Defendants incorporate each of its responses to paragraphs 1-94 as though fully set forth herein.

104. The Internet Archive Defendants are without knowledge or information sufficient to admit or deny the allegations of paragraph 104, and on that basis, deny them.

105. Paragraph 105 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 105 of the Amended Complaint.

106. Paragraph 106 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 106 of the Amended Complaint.

107. Paragraph 107 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 107 of the Amended Complaint.

108. Paragraph 108 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 108 of the Amended Complaint.

109. Paragraph 109 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 109 of the Amended Complaint, and specifically deny that Plaintiffs have suffered or are entitled to any damages.

110. Paragraph 110 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 110 of the Amended Complaint, and specifically deny that Plaintiffs are entitled to attorneys' fees or costs.

111. Paragraph 111 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 111 of the Amended Complaint, and specifically deny that Plaintiffs are entitled to injunctive relief.

THIRD CAUSE OF ACTION

Infringing Public Performance by Means of a Digital Audio Transmission against Internet Archive

112. The Internet Archive Defendants incorporate each of its responses to paragraphs 1-94 as though fully set forth herein.

113. The Internet Archive Defendants are without knowledge or information sufficient to admit or deny the allegations of paragraph 113, and on that basis, deny them.

114. Paragraph 114 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 114 of the Amended Complaint.

122. The Internet Archive Defendants are without knowledge or information sufficient to admit or deny the allegations of paragraph 122, and on that basis, deny them.

1 123. Paragraph 123 contains legal conclusions to which no answer is required. To the
2 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
3 123 of the Amended Complaint.

4 124. Paragraph 124 contains legal conclusions to which no answer is required. To the
5 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
6 124 of the Amended Complaint.

7 125. Paragraph 125 contains legal conclusions to which no answer is required. To the
8 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
9 125 of the Amended Complaint.

10 126. Paragraph 126 contains legal conclusions to which no answer is required. To the
11 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
12 126 of the Amended Complaint.

13 127. Paragraph 127 contains legal conclusions to which no answer is required. To the
14 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
15 127 of the Amended Complaint.

16 128. Paragraph 128 contains legal conclusions to which no answer is required. To the
17 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
18 128 of the Amended Complaint.

19 129. Paragraph 129 contains legal conclusions to which no answer is required. To the
20 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
21 129 of the Amended Complaint.

22 130. Paragraph 130 contains legal conclusions to which no answer is required. To the
23 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
24 130 of the Amended Complaint.

25 131. Paragraph 131 contains legal conclusions to which no answer is required. To the
26 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
27 131 of the Amended Complaint, and specifically deny that Plaintiffs have suffered or are entitled
28 to any damages.

134. Paragraph 134 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants are without knowledge or information sufficient to admit or deny the remaining allegations of paragraph 134, and on that basis, deny them.

139. Paragraph 139 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 139 of the Amended Complaint.

1 140. Paragraph 140 contains legal conclusions to which no answer is required. To the
2 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
3 140 of the Amended Complaint.

4 141. Paragraph 141 contains legal conclusions to which no answer is required. To the
5 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
6 141 of the Amended Complaint.

7 142. Paragraph 142 contains legal conclusions to which no answer is required. To the
8 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
9 142 of the Amended Complaint, and specifically deny that Plaintiffs have suffered or are entitled
10 to any damages.

11 143. Paragraph 143 contains legal conclusions to which no answer is required. To the
12 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
13 143 of the Amended Complaint, and specifically deny that Plaintiffs are entitled to attorneys' fees
14 or costs.

15 144. Paragraph 144 contains legal conclusions to which no answer is required. To the
16 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
17 144 of the Amended Complaint, and specifically deny that Plaintiffs are entitled to injunctive
18 relief.

19 145. Paragraph 145 contains legal conclusions to which no answer is required. To the
20 extent an answer is required, the Internet Archive Defendants are without knowledge or
21 information sufficient to admit or deny the remaining allegations of paragraph 145, and on that
22 basis, deny them,.

23 **SIXTH CAUSE OF ACTION**

24 **Vicarious Infringement against Internet Archive**

25 146. The Internet Archive Defendants incorporate each of its responses to paragraphs 1-
26 94 as though fully set forth herein.

27 147. The Internet Archive Defendants are without knowledge or information sufficient
28 to admit or deny the allegations of paragraph 147, and on that basis, deny them.

1 148. Paragraph 148 contains legal conclusions to which no answer is required. To the
2 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
3 148 of the Amended Complaint.

4 149. Paragraph 149 contains legal conclusions to which no answer is required. To the
5 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
6 149 of the Amended Complaint.

7 150. Paragraph 150 contains legal conclusions to which no answer is required. To the
8 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
9 150 of the Amended Complaint.

10 151. Paragraph 151 contains legal conclusions to which no answer is required. To the
11 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
12 151 of the Amended Complaint.

13 152. Paragraph 152 contains legal conclusions to which no answer is required. To the
14 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
15 152 of the Amended Complaint.

16 153. Paragraph 153 contains legal conclusions to which no answer is required. To the
17 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
18 153 of the Amended Complaint.

19 154. Paragraph 154 contains legal conclusions to which no answer is required. To the
20 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
21 154 of the Amended Complaint, and specifically deny that Plaintiffs have suffered or are entitled
22 to any damages.

23 155. Paragraph 155 contains legal conclusions to which no answer is required. To the
24 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
25 155 of the Amended Complaint, and specifically deny that Plaintiffs are entitled to attorneys' fees
26 or costs.

27 156. Paragraph 156 contains legal conclusions to which no answer is required. To the
28 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph

1 156 of the Amended Complaint, and specifically deny that Plaintiffs are entitled to injunctive
2 relief.

3 157. Paragraph 157 contains legal conclusions to which no answer is required. To the
4 extent an answer is required, the Internet Archive Defendants are without knowledge or
5 information sufficient to admit or deny the remaining allegations of paragraph 157, and on that
6 basis, deny them.

7 **SEVENTH CAUSE OF ACTION**
8 **Contributory Infringement against Kahle**

9 158. The Internet Archive Defendants incorporate each of its responses to paragraphs 1-
10 94 as though fully set forth herein.

11 159. The Internet Archive Defendants are without knowledge or information sufficient
12 to admit or deny the allegations of paragraph 159, and on that basis, deny them.

13 160. Paragraph 160 contains legal conclusions to which no answer is required. To the
14 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
15 160 of the Amended Complaint.

16 161. Paragraph 161 contains legal conclusions to which no answer is required. To the
17 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
18 161 of the Amended Complaint.

19 162. Paragraph 162 contains legal conclusions to which no answer is required. To the
20 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
21 162 of the Amended Complaint.

22 163. Paragraph 163 contains legal conclusions to which no answer is required. To the
23 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
24 163 of the Amended Complaint.

25 164. Paragraph 164 contains legal conclusions to which no answer is required. To the
26 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
27 164 of the Amended Complaint.
28

168. Paragraph 168 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 168 of the Amended Complaint, and specifically deny that Plaintiffs are entitled to injunctive relief.

172. Paragraph 172 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 172 of the Amended Complaint.

174. Paragraph 174 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 174 of the Amended Complaint.

175. Paragraph 175 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 175 of the Amended Complaint.

176. Paragraph 176 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 176 of the Amended Complaint, and specifically deny that Plaintiffs have suffered or are entitled to any damages.

177. Paragraph 177 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 177 of the Amended Complaint, and specifically deny that Plaintiffs are entitled to attorneys' fees or costs.

178. Paragraph 178 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 178 of the Amended Complaint, and specifically deny that Plaintiffs are entitled to injunctive relief.

179. The Internet Archive Defendants incorporate each of its responses to paragraphs 1-94 as though fully set forth herein.

180. The Internet Archive Defendants are without knowledge or information sufficient to admit or deny the allegations of paragraph 180, and on that basis, deny them.

1 181. Paragraph 181 contains legal conclusions to which no answer is required. To the
2 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
3 181 of the Amended Complaint.

4 182. Paragraph 182 contains legal conclusions to which no answer is required. To the
5 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
6 182 of the Amended Complaint.

7 183. Paragraph 183 contains legal conclusions to which no answer is required. To the
8 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
9 183 of the Amended Complaint.

10 184. Paragraph 184 contains legal conclusions to which no answer is required. To the
11 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
12 184 of the Amended Complaint.

13 185. Paragraph 185 contains legal conclusions to which no answer is required. To the
14 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
15 185 of the Amended Complaint.

16 186. Paragraph 186 contains legal conclusions to which no answer is required. To the
17 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
18 186 of the Amended Complaint, and specifically deny that Plaintiffs have suffered or are entitled
19 to any damages.

20 187. Paragraph 187 contains legal conclusions to which no answer is required. To the
21 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
22 187 of the Amended Complaint, and specifically deny that Plaintiffs are entitled to attorneys' fees
23 or costs.

24 188. Paragraph 188 contains legal conclusions to which no answer is required. To the
25 extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph
26 188 of the Amended Complaint, and specifically deny that Plaintiffs are entitled to injunctive
27 relief.
28

TENTH CAUSE OF ACTION
Vicarious Infringement against Blood

189. The Internet Archive Defendants incorporate each of its responses to paragraphs 1-94 as though fully set forth herein.

190. The Internet Archive Defendants are without knowledge or information sufficient to admit or deny the allegations of paragraph 190, and on that basis, deny them.

191. Paragraph 191 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 191 of the Amended Complaint.

192. Paragraph 192 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 192 of the Amended Complaint.

193. Paragraph 193 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 193 of the Amended Complaint.

194. Paragraph 194 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 194 of the Amended Complaint.

195. Paragraph 195 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 195 of the Amended Complaint.

196. Paragraph 196 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 196 of the Amended Complaint, and specifically deny that Plaintiffs have suffered or are entitled to any damages.

197. Paragraph 197 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph

197 of the Amended Complaint, and specifically deny that Plaintiffs are entitled to attorneys' fees or costs.

198. Paragraph 198 contains legal conclusions to which no answer is required. To the extent an answer is required, the Internet Archive Defendants deny the allegations of paragraph 198 of the Amended Complaint, and specifically deny that Plaintiffs are entitled to injunctive relief.

PRAYER FOR RELIEF

In response to the Prayer for Relief, the Internet Archive Defendants deny that Plaintiffs are entitled to the requested relief, or to any relief whatsoever.

DEFENSES

The Internet Archive Defendants assert at least the following defenses in response to the allegations in the Amended Complaint, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein. In addition, the Internet Archive Defendants reserve all rights to assert additional defenses, including affirmative defenses, that become known through the course of discovery.

FIRST DEFENSE Failure to State a Claim

The Amended Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE Fair Use

To the extent there was any use of Plaintiffs' copyrighted materials, such use is protected by the Fair Use Doctrine, including under 17 U.S.C. §§ 107 and 1401.

THIRD DEFENSE No Statutory Damages

Pursuant to 17 U.S.C. § 504(c)(2), Plaintiffs are not entitled to statutory damages, and statutory damages must be remitted, because the Internet Archive believed and had reasonable grounds for believing that the accused use of the copyrighted work was a fair use, including under sections 107 and 1401, and the Internet Archive is an institution, library, or archive accused of having infringed by reproducing works in copies or phonorecords.

FOURTH DEFENSE
Statute of Limitations

Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations under 17 U.S.C. § 507(b).

FIFTH DEFENSE
Laches

Plaintiffs' remedies are barred, in whole or in part, by the doctrine of laches.

SIXTH DEFENSE
Estoppel

Plaintiffs' claims are barred, in whole or in part, by equitable estoppel, waiver, *in pari delicto*, unclean hands, ratification, and/or other related equitable doctrines.

SEVENTH DEFENSE
Library Use

Defendants' activities are privileged under 17 U.S.C. § 108(h) (Library Use Exception).

EIGHTH DEFENSE
Copyright Misuse

Plaintiffs' claims are barred, in whole or in part, by the doctrine of copyright misuse because plaintiffs have violated the antitrust laws, otherwise illegally extended their lawful copyright monopolies, or violated the public policies underlying the copyright laws.

NINTH DEFENSE
Implied License

As to some or all of the sound recordings in dispute, the Internet Archive Defendants held an implied license.

TENTH DEFENSE
Innocent Infringement

To the extent Plaintiffs establish any acts of infringement, the Internet Archive Defendants were not aware and had no reason to believe their acts constituted an infringement of Plaintiffs' copyrights, allowing for the Court to reduce any award of statutory damages to an amount as low as \$200 per work infringed. 17 U.S.C. § 504(c)(2).

ELEVENTH DEFENSE

Non-willfulness

There was no willful infringement by the Internet Archive Defendants; accordingly, Plaintiffs' claims, for enhanced damages have no basis and should be denied.

TWELFTH DEFENSE

Safe Harbor

To the extent they arise by reason of the storage at the direction of a user of allegedly infringing material, Plaintiffs' claims are barred in whole or in part by 17 U.S.C. § 512(c).

THIRTEENTH DEFENSE

Copyright Ownership

Plaintiffs' claims are barred to the extent they do not own copyrights in the works underlying their claims.

PRAYER FOR RELIEF

WHEREFORE, the Internet Archive Defendants respectfully prays that the Court:

1. Deny Plaintiffs' prayer for relief in its entirety;
2. Dismiss the Amended Complaint with prejudice and enter judgment in favor of Defendants;
3. Award Defendants their attorneys' fees and costs incurred in this action, and any other amounts recoverable under law; and
4. Award the Defendants such other and further relief as the Court deems just and equitable.

The Internet Archive hereby demands a trial by jury in this action.

1 Dated: May 29, 2024

Respectfully submitted,

2 **LATHAM & WATKINS LLP**

3 /s/ Allison L. Stillman

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